TRANSMITTAL OF APPEAL BRIEF

Docket No. (Optional): **A-7259 (191910-1870)**

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September 14, 2006

Brooke French

Signature – Brooke French

In re Application of
Rodriguez, et al

Application Number	Filed
09/896,231	**June 29, 2001**

For
Bandwidth Allocation and Pricing System for Download Media Content

Group Art Unit	Examiner
2623	**Ustaris, Joseph G.**

Confirmation No.:
9416

Transmitted herewith is the Appeal Brief in this application with respect to the Notice of Appeal filed on May 30, 2006

The fee for this Appeal Brief is (37 CFR 1.17(c) $ 500.00

(complete (a) or (b) as applicable)

The proceedings herein are for a patent application and the provisions of 37 CFR 1.17(a)-(d) apply.

☒ (a) Applicant petitions for an extension of time under 37 CFR 1.136 (fees: 37 CFR 1.17(a)-(d) for the total number of months checked below:

☒	One month (37 CFR 1.17(a)(1))	$ 120.00
☐	Two months (37 CFR 1.17(a)(2))	$ 430.00
☐	Three months (37 CFR 1.17(a)(3))	$ 980.00
☐	Four months (37 CFR 1.17(a)(4))	$ 1530.00

☐ The extension fee has already been filed in this application.

☐ (b) Applicant believes that no extension of time is required. However, this conditional petition is being made to provide for the possibility that the applicant has inadvertently overlooked the need for a petition and fee for extension of time.

Method of Payment:

☒ Payment is enclosed as follows:
- ☐ A check in the amount of enclosed.
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Warning: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

9/11/2006
Date

Christopher D. Quinn, Reg. No. 54,142

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS AND INTERFERENCES

In Re Application of:

Rodriguez, et al.

Serial No.: 09/896,231

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For: Bandwidth Allocation and Pricing System for Download Media Content

APPEAL BRIEF UNDER 37 C.F.R. §1.192

Mail Stop Appeal Brief - Patents
Commissioner of Patents and Trademarks
P.O. Box 1450
Alexandria, Virginia 22313-1450

Sir:

This is an appeal from the decision of Examiner Joseph G. Ustaris, Group Art Unit 2623, mailed December 29, 2005, rejecting all claims 1-74 in the present application and making the rejection FINAL.

I. REAL PARTY IN INTEREST

The real party in interest of the instant application is Scientific-Atlanta, Inc., having its principal place of business at 5030 Sugarloaf Parkway, Lawrenceville, GA 30044. Scientific-Atlanta, Inc., the assignee of record, is wholly owned by Cisco Systems, Inc.

II. RELATED APPEALS AND INTERFERENCES

There are no related appeals or interferences.

III. STATUS OF THE CLAIMS

The Office Action has rejected all claims 1-74, and Applicant hereby appeals the rejection to all claims (1-74). Claims 1, 15-18, 35-38, 43, 52, and 63 have been amended during prosecution. All claim 1-74 remain pending.

Claims 1-4, 19, 20, 22, 23, 24, 62, 63, 64, 65, 67-69, 72, and 74 are rejected under 35 U.S.C. § 102(e) as being allegedly anticipated by Rodriguez *et al.* (U. S. Patent Publication No. 2005/0071882). Claim 5 is rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Haddad (U.S. Patent No. 5,555,441) in view of Hooper *et al.* (U.S. Patent No. 5,414,455). Claim 6 is rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Haddad in view of Greenwood *et al.* (U.S. Patent No. 5,568,181). Claim 7-18, 21, 26-50 and 53-61 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Haddad in view of Hassell *et al.* (U.S. Patent Publication No. 2004/0128685) and further in view of Seazholtz *et al* (U.S. Patent No. 5,812,786). Claim 25 is rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Haddad in view of Hassell in view of Seazholtz, in view of Kitsukawa *et al.* (U.S. Patent Publication No. 2001/0013125). Claims 51 and 52 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Haddad in view of Hassell in view of Seazholtz, in view of Okamoto *et al.* (U.S. Patent No. 6,901,385). Claim 66 is rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Haddad in view of Wahl (U.S. Patent No. 5,898,456). Claim 70 is rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Haddad. Claim 71 is rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Haddad in view of Okamoto *et al.* Claim 73 is rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Haddad in view of Seazholtz.

IV. STATUS OF AMENDMENTS

No amendments have been made or requested since the mailing of the FINAL Office Action and all amendments submitted prior to the FINAL action have been entered. A copy of the current claims is attached hereto as the Claims-Appendix in §VIII.

V. SUMMARY OF CLAIMED SUBJECT MATTER

Claim 1 recites a recordable media content purchasing system comprising: a first memory; and a first processor configured with the first memory to download recordable media content at one of a plurality of various download times for purchase of the recordable media content, wherein the processor uses reallocated excess on-demand infrastructure capacity. This claim terminology may be understood with the reference, for example, FIG. 3 and pp. 8-10 of the specification.

Claim 63 recites a recordable media content purchasing method comprising the steps of: receiving a user request for purchase of recordable media content; and downloading the requested recordable media content at one of a plurality of various download times for purchase of the recordable media content, including during reallocated excess on-demand infrastructure capacity. This claim terminology may be understood with the reference, for example, FIG. 3 and pp. 8-10 of the specification.

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Independent claims 1 and 63 stand rejected under 35 U.S.C. § 102(e) as being allegedly anticipated by Rodriguez *et al.* (U. S. Patent Publication No. 2005/0071882). Claims 15 - 18, 21, 40, 45, 47, 49 and 61 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Haddad in view of Hassell *et al.* (U.S. Patent Publication No. 2004/0128685) and further in view of Seazholtz *et al* (U.S. Patent No. 5,812,786). Claims 7 and 12 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Haddad in view of Hassell *et al.* (U.S. Patent Publication No. 2004/0128685) and further in view of Seazholtz *et al* (U.S. Patent No. 5,812,786).

VII. ARGUMENT

A. Rejection of Independent Claim 1

The Office Action rejects claim 1 under 35 U.S.C. § 102(e) as being allegedly anticipated by *Rodriguez* (U. S. Patent Publication No. 2005/0071882), and alternatively by *Haddad*. For the reasons set forth below, Applicant respectfully traverses the rejection.

Independent claim 1 recites:

> 1. A recordable media content purchasing system comprising:
> a first memory; and
> ***a first processor configured with the first memory to download recordable media content at one of a plurality of various download times for purchase of the recordable media content***, wherein ***the processor uses reallocated excess on-demand infrastructure capacity***.

(Emphasis added).

For a proper rejection of a claim under 35 U.S.C. §102, the cited reference must disclose, teach, or suggest all elements/features/steps of the claim at issue. *See, e.g., E.I. du Pont de Nemours & Co. v. Phillips Petroleum Co.*, 849 F.2d 1430, 7 U.S.P.Q.2d 1129 (Fed. Cir. 1988).

Applicant respectfully submits that independent claim 1 is allowable for at least the reason that *Rodriguez* does not disclose, teach, or suggest at least **a first processor configured with the first memory to download recordable media content at one of a plurality of various download times for purchase of the recordable media content**.

Even if *Rodriguez* discloses a video on demand system, it does not disclose recordable media content. The Final Office Action has cited paragraphs 7, 36, 38, 39, 47, 48, 52, 53, 61, and 62 as allegedly disclosing a system for downloading recordable media content at various times.

Even if, arguendo, paragraph [0007] teaches a non-real time throttling mechanism over a set of logical data channels (the Viswanathan method), it fails to teach downloading recordable media content.

Even if, arguendo, paragraph [0036] of *Rodriguez* teaches the saving of information concerning the media content, it does not record the actual media content that is purchased. Additionally, the memory disclosed in paragraph [0038] of *Rodriguez* is for system operations (decompressing video) as described in detail in paragraph [0039], not for recording a media instance for playback at a later time.

Even if, arguendo, paragraphs 47, 48, 52, 61, and 62 teach the scheduling of the downloading of on demand video, there is not a teaching of recording the downloaded content that is purchased, nor is there a teaching that the downloaded content is recordable. Likewise, even if, arguendo, paragraph 53 discloses fees for different download times, it does not disclose the

downloading of recordable media content; no recording is disclosed. Applicant respectfully asserts that the *Rodriguez* reference, when viewed as a whole, discloses real-time video on demand services and does not teach recordable media content. In fact, as one of ordinary skill in the art would understand, video on demand content is generally not recordable.

The concept of video on demand is for viewing at the time of the access of the content. The concept of purchasing recordable media content is for the ability to view the content at a later time. The Advisory Action alleges that, since video can be recorded, all video is recordable content. However, in the system taught by *Rodriguez,* none of the cited paragraphs disclose recording video. The recording of video is not taught by *Rodriguez*. Therefore, Applicant challenges the Examiner's statement as clear error.

Additionally, Applicant respectfully submits that independent claim 1 is allowable for at least the reason that neither *Rodriguez* nor *Haddad*, in the alternative, discloses, teaches, or suggests that **the processor uses reallocated excess on-demand infrastructure capacity**. Even if, arguendo, *Haddad* teaches a system that is capable of distributing multimedia data at various times, such as off-peak hours to more efficiently utilize the system hardware, *Haddad* does not disclose relocating excess on demand infrastructure capacity. As one of ordinary skill in the art would recognize, the reallocation of excess on demand infrastructure capacity includes an initial allocation, a determination of excess capacity, and then a reallocation of the excess capacity. An initial allocation does not, by itself, reallocate an excess of on-demand infrastructure capacity. *Rodriguez* does not cure this deficiency.

The Final Office Action states that "Haddad further teaches the system is capable of distributing the multimedia data at various times, such as off-peak hours, to more efficiently utilize the system hardware … (Col. 2, Ln 34-Col. 3, Ln. 5)." This section does **not** teach

reallocating excess on-demand infrastructure capacity as alleged in the Office Action. **Re**allocation of capacity is not mentioned or even alluded to; reallocating **excess on-demand infrastructure** capacity is nowhere to be found in the reference. The Final Office Action appears to attempt to read claim terms such as "excess on-demand infrastructure" out of the claims. Even if this section teaches that the subscriber may decide when to download the content to meet his or her needs, it certainly does not teach the reallocation of excess on-demand infrastructure capacity. Therefore, Applicant challenges the Examiner's statement as clear error. Therefore, for at least the reason that neither *Rodriguez* nor *Haddad* anticipates claim 1, the rejection should be overturned.

Because independent claim 1 is allowable over the cited references of record, dependent claims 2-4, 19, 20, 22-24, and 62 (which depend from independent claim 1) are allowable as a matter of law for at least the reason that dependent claims 2-4, 19, 20, 22-24, and 62 contain all the steps/features of independent claim 1. *See Minnesota Mining and Manufacturing Co. v. Chemque, Inc.*, 303 F.3d 1294, 1299 (Fed. Cir. 2002) *Jeneric/Pentron, Inc. v. Dillon Co.*, 205 F.3d 1377, 54 U.S.P.Q.2d 1086 (Fed. Cir. 2000); *Wahpeton Canvas Co. v. Frontier Inc.*, 870 F.2d 1546, 10 U.S.P.Q.2d 1201 (Fed. Cir. 1989). Therefore, since dependent claims 2-4, 19, 20, 22-24, and 62 are patentable over *Rodriguez* and *Haddad*, the rejection to claims 2-4, 19, 20, 22-24, and 62 should be overturned and the claims allowed.

Additionally and notwithstanding the foregoing reasons for allowability of independent claim 1, dependent claims 2-4, 19, 20, 22-24, and 62 recite further features and/or combinations of features, as are apparent by examination of the claims themselves, that are patently distinct from the cited art of record. Hence there are other reasons why dependent claims 2-4, 19, 20, 22-24, and 62 are allowable.

B. Rejection of Dependent Claims 15 -18

Applicant submits that the following clear legal deficiency exists in the rejection. Applicant respectfully submits that a claimed element, specifically, among others, "using reallocated excess on-demand infrastructure capacity" does not appear to have received an examination in the Final Office Action. In the rejection of claims 15-18, the Final Office Action references language present before the latest amendment, language that is no longer present in the claims. The Advisory Action asserts that "the limitation was addressed on page 8 of the action." *See Advisory Action*, page 2. However, even if similar language to the language in question in claims 15-18 was examined in claim 5, claim 5 does not include all the limitations of claims 15-18. In fact, claim 5 is rejected under a different combination of references than the references under which claims 15-18 are rejected. Claim 5 is rejected under a combination of Haddad and Hooper, and claims 15-18 are rejected under a combination of Haddad, Hassell, and Seazholtz.

The Advisory Action asserts that "[t]he Examiner did overlook and fail to delete the portions of the action that discuss the deleted claim language. This was [allegedly] a simple oversight." The fact that this may have been an oversight does not offer Applicant an opportunity to address the rejection in any meaningful way. For at least this reason, the rejection of claims 15 – 18 should be overturned. Furthermore, the finality of the latest Office Action should be withdrawn and a new Office Action, should one be necessary, be entered.

C. Rejection of Independent Claim 63

The Office Action rejects claim 63 under 35 U.S.C. § 102(e) as being allegedly anticipated by *Rodriguez* (U. S. Patent Publication No. 2005/0071882), and alternatively by

Haddad. For the reasons set forth below, Applicant respectfully traverses the rejection.

Independent claim 63 recites:

63. A recordable media content purchasing method comprising the steps of:
receiving a user request for purchase of recordable media content; and
downloading the requested recordable media content at one of a plurality of various download times for purchase of the recordable media content, including ***during reallocated excess on-demand infrastructure capacity***.

(Emphasis Added)

For a proper rejection of a claim under 35 U.S.C. §102, the cited reference must disclose, teach, or suggest all elements/features/steps of the claim at issue. Applicant respectfully submits that independent claim 63 is allowable for at least the reason that *Rodriguez* does not disclose, teach, or suggest at least **downloading the requested recordable media content at one of a plurality of various download times for purchase of the recordable media content**.

Even if *Rodriguez* discloses a video on demand system, it does not disclose recordable media content. The Final Office Action has cited paragraphs 7, 36, 38, 39, 47, 48, 52, 53, 61, and 62 as allegedly disclosing a system for downloading recordable media content at various times.

Even if, arguendo, paragraph [0007] teaches a non-real time throttling mechanism over a set of logical data channels (the Viswanathan method), it fails to teach downloading recordable media content.

Even if, arguendo, paragraph [0036] of *Rodriguez* teaches the saving of information concerning the media content, it does not record the actual media content that is purchased.

Additionally, the memory disclosed in paragraph [0038] of *Rodriguez* is for system operations (decompressing video) as described in detail in paragraph [0039], not for recording a media instance for playback at a later time.

Even if, arguendo, paragraphs 47, 48, 52, 61, and 62 teach the scheduling of the downloading of on demand video, there is not a teaching of recording the downloaded content that is purchased, nor is there a teaching that the downloaded content is recordable. Likewise, even if, arguendo, paragraph 53 discloses fees for different download times, it does not disclose the downloading of recordable media content; no recording is disclosed. Applicant respectfully asserts that the *Rodriguez* reference, when viewed as a whole, discloses real-time video on demand services and does not teach recordable media content. In fact, as one of ordinary skill in the art would understand, video on demand content is generally not recordable.

The concept of video on demand is for viewing at the time of the access of the content. The concept of purchasing recordable media content is for the ability to view the content at a later time. The Advisory Action alleges that, since video can be recorded, all video is recordable content. However, in the system taught by *Rodriguez,* none of the cited paragraphs disclose recording video. The recording of video is not taught by *Rodriguez*. Therefore, Applicant challenges the Examiner's statement as clear error.

Additionally, Applicant respectfully submits that independent claim 63 is allowable for at least the reason that neither *Rodriguez* nor *Haddad*, in the alternative, discloses, teaches, or suggests downloading the requested recordable media content at one of a plurality of various download times for purchase of the recordable media content, including **during reallocated excess on-demand infrastructure capacity**. Even if, arguendo, *Haddad* teaches a system that is capable of distributing multimedia data at various times, such as off-peak hours to more efficiently utilize the

system hardware, *Haddad* does not disclose relocating excess on demand infrastructure capacity. As one of ordinary skill in the art would recognize, the reallocation of excess on demand infrastructure capacity includes an initial allocation, a determination of excess capacity, and then a reallocation of the excess capacity. An initial allocation does not, by itself, reallocate an excess of on-demand infrastructure capacity. *Rodriguez* does not cure this deficiency.

The Final Office Action states that "Haddad further teaches the system is capable of distributing the multimedia data at various times, such as off-peak hours, to more efficiently utilize the system hardware … (Col. 2, Ln 34-Col. 3, Ln. 5)." This section does **not** teach reallocating excess on-demand infrastructure capacity as alleged in the Office Action. **Re**allocation of capacity is not mentioned or even alluded to; reallocating **excess on-demand infrastructure** capacity is nowhere to be found in the reference. The Final Office Action appears to attempt to read claim terms such as "excess on-demand infrastructure" out of the claims. Even if this section teaches that the subscriber may decide when to download the content to meet his or her needs, it certainly does not teach the reallocation of excess on-demand infrastructure capacity. Therefore, Applicant challenges the Examiner's statement as clear error. Therefore, neither *Rodriguez* nor *Haddad* anticipates claim 63, and the rejection should be overturned for at least these reasons.

Because independent claim 63 is allowable over the cited references of record, dependent claims 63-65, 67-69, and 72-74 (which depend from independent claim 63) are allowable as a matter of law for at least the reason that dependent claims 63-65, 67-69, and 72-74 contain all the steps/features of independent claim 63. Therefore, since dependent claims 63-65, 67-69, and 72-74 are patentable over *Rodriguez* and *Haddad*, the rejection to claims 63-65, 67-69, and 72-74 should be overturned and the claims allowed.

Additionally and notwithstanding the foregoing reasons for allowability of independent claim 63, dependent claims 63-65, 67-69, and 72-74 recite further features and/or combinations of features, as are apparent by examination of the claims themselves, that are patently distinct from the cited art of record. Hence there are other reasons why dependent claims 63-65, 67-69, and 72-74 are allowable.

D. Findings of Official Notice Regarding Claims 7, 12, 17, 18, 21, 40, 45, 47, 49, and 61

The Final Office Action further takes Official Notice that some features in the claims are well-known in the art. As noted by the court in *In re Ahlert*, 424 F.2d 1088, 1091 (CCPA 1970), the notice of facts beyond the record which may be taken by the examiner must be "capable of such instant and unquestionable demonstration as to defy dispute." This is an extremely high level to be reached. Particularly in the context of the various claimed combinations, the subject matter alleged to be well-known is too complex for one of ordinary skill in the art to consider it to be well-known to the point that no additional evidence is needed. If Applicant adequately traverses the examiner's assertion of Official Notice, the Examiner must provide documentary evidence in the next Office Action if the rejection is to be maintained. Applicant submits that the Examiner's assertion was adequately traversed. In turn, the Examiner submitted single patents as documentary evidence that features in claims 7, 12, 17, 18, 21, 40, 45, 47, 49, and 61 are well-known.

Applicant respectfully submits that a single patent is not sufficient evidence in and of itself to support a conclusion that a feature is well-known. If the converse were true, every element found in a patent reference could be considered to be well-known. Instead, Applicant

submits that the fact that the feature was considered patentable by the U.S.P.T.O is evidence that the feature is **not** well-known. In fact, if the mere presence of a feature in a patent leads to the conclusion that the feature is well-known, a claim would almost never be found to be allowable. Applicant further asserts that proper patent examining procedure would use the cited references in a rejection under 35 U.S.C. §103 should one be deemed warranted.

Additionally, an assertion that an element, by itself, in a vacuum, is well-known is insufficient to form a rejection. To form the basis of a rejection, the element must be well-known in combination with each and every element of the claim. To hold otherwise would abolish the combination of elements concept. As the cited features have not been shown capable of such instant and unquestionable demonstration as to deny dispute, the finding that the features are "well-known" is improper. For at least these reasons, Applicant submits that the rejection of claims 7, 12, 17, 18, 21, 40, 45, 47, 49, and 61 should be overturned and the claims allowed.

CONCLUSION

Based upon the foregoing discussion, Applicants respectfully requests that the Examiner's final rejection of claims 1-74 be overruled by the Board, and that the application be allowed to issue as a patent with all pending claims.

The PTO is authorized to charge the $500 fee for this Appeal Brief to the credit account identified in the accompanying credit card authorization form. No additional fee is believed to be due in connection with this appeal. If, however, any additional fee is deemed to be payable, you are hereby authorized to charge any such fee to deposit account 20-0778.

Respectfully submitted,

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VIII. CLAIMS - APPENDIX

1. (Previously Presented) A recordable media content purchasing system comprising:

a first memory; and

a first processor configured with the first memory to download recordable media content at one of a plurality of various download times for purchase of the recordable media content, wherein the processor uses reallocated excess on-demand infrastructure capacity.

2. (Original) The system of claim 1, wherein the first processor allocates the bandwidth for transmission of the recordable media content according to a series of recurring schedules that are based on historical bandwidth consumption.

3. (Original) The system of claim 1, wherein the first processor allocates the bandwidth for transmission of the recordable media according to a series of pre-configured schedule that are implemented according to current bandwidth consumption.

4. (Original) The system of claim 1, wherein the first processor is configured to encrypt the recordable media content.

5. (Original) The system of claim 1, wherein the first processor downloads recordable media content at a higher bit rate than the real-time playback rate of the recordable media content.

6. (Original) The system of claim 1, wherein the first processor downloads recordable media content at a lower bit rate than the real-time playback rate of the recordable media content.

7. (Original) The system of claim 1, further comprising a second memory configured for buffering the recordable media content, a primary storage device in electrical communications with the second memory, a secondary storage device in electrical communications with the second memory, wherein the secondary storage device is configured to store the recordable media in one of a plurality of portable mediums indefinitely, and a second processor configured by the second memory to provide a user interface to a user, wherein the user interface presents a variable price structure and a variable download structure for the purchase of recordable media based on the variable download rates and the variable download times allocated by the first processor, wherein the second processor is further configured to communicate the user request for recordable media to the first processor, wherein the second processor is further configured to receive the recordable media from the first processor, wherein the second processor is further configured to transfer the recordable media between the second memory and the primary storage device for storage in one of the plurality of portable mediums in the secondary storage device.

8. (Original) The system of claim 7, wherein the first processor is configured to authorize the transmission of the recordable media content to the second processor.

9. (Original) The system of claim 7, wherein the first processor receives download option requests and price option requests for the recordable media content from the second processor wherein the download option and the price option requests are selected by the user at the user interface.

10. (Original) The system of claim 7, wherein the first processor is in electrical communication with an on demand server.

11. (Original) The system of claim 10, wherein the first processor downloads recordable media content through the on demand server during peak bandwidth use based on the user demand for immediate download at a premium purchase price.

12. (Original) The system of claim 10, wherein the first processor downloads recordable media content through the on demand server during peak bandwidth use based on the user demand for an extended download duration at a reduced purchase price.

13. (Original) The system of claim 10, wherein the first processor downloads recordable media content through the on demand server during repossessed unused bandwidth intended for on-demand services.

14. (Original) The system of claim 10, wherein the repossessed unused bandwidth includes off peak bandwidth use.

15. (Previously Presented) The system of claim 14, wherein the first processor downloads recordable media content through the on demand server using reallocated excess on demand infrastructure capacity based on the user demand for immediate download at a reduced purchase price.

16. (Previously Presented) The system of claim 14, wherein the first processor downloads recordable media content through the on demand server using reallocated excess on demand infrastructure capacity based on the user demand for an extended download duration at a reduced purchase price.

17. (Previously Presented) The system of claim 14, wherein the first processor downloads recordable media content through the on demand server using reallocated excess on demand infrastructure capacity based on the user demand during peak bandwidth use for a delayed download that commences during the off peak bandwidth use for immediate download during the off-peak bandwidth use at a reduced purchase price.

18. (Previously Presented) The system of claim 14, wherein the first processor downloads recordable media content through the on demand server using reallocated excess on demand infrastructure capacity based on the user demand during peak bandwidth use for a delayed download that commences during the off-peak bandwidth use for an extended download duration during the off-peak bandwidth use at a reduced purchase price.

19. (Original) The system of claim 1, wherein the first processor is in electrical communication with a broadcast file system server.

20. (Original) The system of claim 19, wherein the first processor stores recordable media in high demand in the broadcast file system server.

21. (Original) The system of claim 19, wherein the first processor stores new releases of recordable media in the broadcast file system server.

22. (Original) The system of claim 19, wherein the first processor downloads recordable media through the broadcast file system server.

23. (Original) The system of claim 19, wherein the first processor downloads recordable media through the broadcast file system server during periods of unused bandwidth of the broadcast file system server.

24. (Original) The system of claim 19, wherein the periods of unused bandwidth of the broadcast file system server include off-peak periods.

25. (Original) The system of claim 7, further comprising a printer, wherein the printer is configured to print labels that verify purchase and authenticity of recordable media content that is stored on one of the plurality of mediums located in the secondary storage device.

26. (Original) The system of claim 7, wherein the primary storage device comprises fast seek time and high data transfer rate characteristics.

27. (Original) The system of claim 7, wherein the primary storage device comprises a hard disk drive.

28. (Original) The system of claim 7, wherein the secondary storage device comprises portable media discs.

29. (Original) The system of claim 7, wherein the secondary storage device comprises a compact disc drive with write capability.

30. (Original) The system of claim 7, wherein the secondary storage device comprises a multiple compact disc carousel drive with write capability.

31. (Original) The system of claim 7, wherein the secondary storage device comprises digital video disc drive with write capability.

32. (Original) The system of claim 7, wherein the secondary storage device comprises a multiple digital video disc carousel drive with write capability.

33. (Original) The system of claim 7, wherein the second processor is configured to decrypt encrypted recordable media content.

34. (Original) The system of claim 7, wherein the request for the recordable media content occurs through an out of band transmission channel.

35. (Previously Presented) The system of claim 7, wherein the user interface enables the user to request an immediate download of the recordable media content at a high bit rate of a plurality of bit rates.

36. (Previously Presented) The system of claim 7, wherein the user interface enables the user to request a download of the recordable media content at a low bit rate of a plurality of bit rates.

37. (Previously Presented) The system of claim 7, wherein the user interface enables the user to request a delayed download of the recordable media content at a high bit rate of a plurality of bit rates.

38. (Previously Presented) The system of claim 7, wherein the user interface enables the user to request a delayed download of the recordable media content at a low bit rate of a plurality of bit rates.

39. (Original) The system of claim 7, wherein the user interface enables the user to select from a plurality of quality content options for the downloaded recordable media content.

40. (Original) The system of claim 7, wherein the user interface is configured as a plurality of recordable media content purchase screens.

41. (Original) The system of claim 40, wherein the recordable media content purchase screens enable the user to select from a plurality of download options and pricing options.

42. (Original) The system of claim 41, wherein the pricing options depend on factors selected from a group consisting of: user demand for a PRM title, bandwidth consumed to download the PRM title, the time of day, the day of the week, the time period the user has to wait for the commencement of the transmission, the time period the user has to wait for the completion of the transmission, PRM content type, the PRM content quality, and the delivery mode.

43. (Previously Presented) The system of claim 42, wherein the recordable media content purchase screens are configured to offer at least one of the factors as pre-configured options.

44. (Original) The system of claim 43, wherein at least one of the recordable media content purchase screens is invoked through an interactive program guide.

45. (Original) The system of claim 44, wherein the recordable media content is represented as an icon in the interactive program guide as part of a subscriber network service.

46. (Original) The system of claim 43, wherein the recordable media content purchase screen is invoked through a service guide.

47. (Original) The system of claim 46, wherein the recordable media content is represented as an icon in the service guide as part of a subscriber network service.

48. (Original) The system of claim 46, wherein the recordable media content is available as a separate service entity within the service guide.

49. (Original) The system of claim 41, wherein the recordable media content purchase screen is invoked as an impulse purchase from within a subscriber network application.

50. (Original) The system of claim 41, wherein the recordable media content purchase screen is invoked within a subscriber network application.

51. (Original) The system of claim 41, wherein the recordable media content purchase screens are configured to offer a trial purchase.

52. (Previously Presented) The system of claim 51, wherein at least one of the secondary storage portable mediums is configured for valid decryption of encrypted trial purchase recordable media content for a specified trial period.

53. (Original) The system of claim 41, wherein the recordable media content purchase screens further include an unavailable recordable media content screen invoked when the recordable media content selection is unavailable.

54. (Original) The system of claim 53, wherein the unavailable recordable media content screen further includes alternative purchase options and alternative download options.

55. (Original) The system of claim 41, wherein the recordable media content purchase screen further includes a pin authorization screen.

56. (Original) The system of claim 7, wherein the second processor is configured to receive user input from a remote device.

57. (Original) The system of claim 7, wherein the second processor is configured to record the purchase transaction in the second memory.

58. (Original) The system of claim 57, wherein the second processor is configured to communicate the purchase transaction to the first processor.

59. (Original) The system of claim 58, wherein the communication is sent through the out of band channel.

60. (Original) The system of claim 57, wherein the first processor periodically polls the second memory to collect the purchase transaction information.

61. (Original) The system of claim 60, wherein the first processor automatically debits the user's account for the purchase transaction.

62. (Original) The system of claim 1, wherein the first processor is further configured to bill the user for the purchase of the recordable media content.

63. (Previously Presented) A recordable media content purchasing method comprising the steps of:

receiving a user request for purchase of recordable media content; and

downloading the requested recordable media content at one of a plurality of various download times for purchase of the recordable media content, including during reallocated excess on-demand infrastructure capacity.

64. (Original) The method of claim 63, further comprising the step of providing a user interface for the use to request the recordable media content.

65. (Original) The method of claim 63, further comprising the step of providing the recordable media content from one of a plurality of on demand servers.

66. (Original) The method of claim 65, further comprising the step of selecting the on demand server that is unused and available for downloading.

67. (Original) The method of claim 65, further comprising the step of selecting the download option based on a plurality of schedule options.

68. (Original) The method of claim 65, further comprising the step of downloading the recordable media content immediately.

69. (Original) The method of claim 65, further comprising the step of downloading the recordable media content with latency.

70. (Original) The method of claim 65, further comprising the step of pricing the downloaded media content based on the availability of the on demand server and bandwidth use.

71. (Original) The method of claim 63, further comprising the step of offering a trial purchase.

72. (Original) The method of claim 63, further comprising the step of offering an impulse purchase.

73. (Original) The method of claim 63, further comprising the step of providing the downloaded media content at a variable bit rate.

74. (Original) The method of claim 63, further comprising the step of repossessing the off-peak bandwidth for downloading the media content.

IX. EVIDENCE - APPENDIX

None.

X. RELATED PROCEEDINGS - APPENDIX

None.